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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/711,965	10/15/2004	Fred Bishop	03292.101090.13	5964
66569 7590 10/16/2007 FITZPATRICK CELLA (AMEX) 30 ROCKEFELLER PLAZA NEW YORK, NY 10112			EXAMINER ELISCA, PIERRE E	
			ART UNIT 3621	PAPER NUMBER
			MAIL DATE 10/16/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/711,965	<b>Applicant(s)</b> BISHOP ET AL.	
	<b>Examiner</b> Pierre E. Elisca	<b>Art Unit</b> 3621	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 06 August 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3-8,10-14 and 16-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>8/23/07</u> . | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

1. Regarding the status of the claims in the instant application, the Examiner has found new prior art (IDS submitted on 08/23/2007). The Examiner is obliged to apply the newly found prior art. The Examiner regrets the delayed process of the application. Accordingly, claims 1-8, 19-14 and 16-23 are currently pending.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-8, 10-14 and 16-23 are rejected under 35 U.S.C. 102 (e) as being anticipated by Zalewski et al U.S. Pat. No. 6,771,981.

As per claims 1, 3-8, 10, 11-14 and 16-23 Zalewski discloses a system for making payments, comprising at least one mobile station using a radio frequency (RF), the system comprising:

Receiving user account data from a transaction application stored on a RF module for use in transaction completion, the RF module in physical and logical communication with a mobile device microprocessor, providing secondary identification to the mobile device microprocessor in response to a request for secondary identification for end user authentication, the request for secondary identification being provided to an end user via a mobile device user interface, the secondary identification being one of voice

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recognition data, biometric recognition data and alphanumeric data, and processing the user account data for transaction completion (see., abstract, col 1-col 16).

As per claim 2 Zalewski discloses the claimed method wherein said receiving the user account data from the RF module, where the user account data is provided subsequent to authentication of an end user secondary identifier, the secondary identifier being provided for authentication by the end user at the a mobile device interface (see., abstract, col 1-col 8).

4. Claims 1-8, 10-14 and 16-23 are rejected under 35 U.S.C. 102 (e) as being anticipated by Zalewski et al U.S.PG Pub20040030601.

As per claims 1-8, 10, 11-14 and 16-23 Zalewski discloses an electronic payment methods for mobile device using a radio frequency (RF) transponder, the system comprising:

Receiving user account data from a transaction application stored on a RF module for use in transaction completion, the RF module in physical and logical communication with a mobile device microprocessor, providing secondary identification to the mobile device microprocessor in response to a request for secondary identification for end user authentication, the request for secondary identification being provided to an end user via a mobile device user interface, the secondary identification being one of voice recognition data, biometric recognition data and alphanumeric data, and processing the

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user account data for transaction completion (see., abstract, paragraph, 0017], [0083], [0122], [0123], [0144])).

## RESPONSE TO ARGUMENTS

5. Applicant's arguments with respect to claims 1-8, 10-14 and 16-20 have been fully considered but they are moot in view of new ground (s). Necessitated by IDS filed on 08/23/2007.

### ***Conclusion***


6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pierre E. Elisca whose telephone number is 571 272 6706. The examiner can normally be reached on 6:30 to 5:00. Patents and hoteling.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Fischer can be reached on 571 272 6779. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

October 04, 2007

  
PIERRE EDDY ELISCA  
PRIMARY EXAMINER  
TECHNOLOGY CENTER 3600